

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRD REGION**

**ESSEX COUNTY ARC, INC.<sup>1</sup>**

Employer

and

**Case 3-RC-13343**

**CIVIL SERVICE EMPLOYEES ASSOCIATION,  
INC., LOCAL 1000, AFSCME, AFL-CIO**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The parties stipulated that the Employer is a New York State not-for-profit corporation with its principal office and place of business at Port Henry, New York, and with residential and other program facilities located at numerous sites in Essex County, New York, where it is

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<sup>1</sup> The Employer's name appears as amended at the hearing.

engaged in providing supportive services and programs to people with developmental disabilities.

During the last twelve months, a representative period, the Employer derived gross revenues in excess of \$250,000, and purchased and received at its New York facilities goods and services valued in excess of \$5,000 directly from points located outside the State of New York. Based on the parties' stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it will effectuate the purpose of the Act to assert jurisdiction herein.

The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

The Employer declines to recognize the Petitioner as the collective-bargaining representative of the employees described in the unit below unless and until the unit is certified. Thus, a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.<sup>2</sup>

The parties stipulated at the hearing that there is no collective-bargaining agreement, which would be a bar to an election.

The parties have stipulated, and I find, that the unit set forth below is an appropriate unit for purposes of the election, which I shall direct.

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

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<sup>2</sup> The parties herein were unwilling to enter into a stipulated election agreement because they could not agree on whether a mail ballot or a manual election should be conducted. This issue will be decided administratively.

All full-time and regular part-time employees employed by the Employer at all of its facilities in Essex County, New York; but excluding consumers, confidential employees, guards and professional employees and supervisors as defined in the Act.

There are approximately 450 employees in the unit herein found appropriate.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time, place, and manner to be set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

**CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.,  
LOCAL 1000, AFSCME, AFL-CIO**

### **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the **full** names and addresses of all eligible voters, shall be filed by the Employer with the Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such list must be received in the Albany Resident Office, Leo W. O'Brien Federal Building, Room 342, Clinton Avenue and North Pearl Street, Albany, New York 12207, on or before **May 27, 2003**. No extension of time to file the list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **June, 2, 2003**.

**DATED** at Buffalo, New York this 19<sup>th</sup> day of May 2003.

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**RHONDA P. ALIOUAT**, Acting Regional Director  
National Labor Relations Board - Region 3  
Thaddeus J. Dulski Federal Building  
111 West Huron Street - Room 901  
Buffalo, New York 14202

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